(1993) 02 KL CK 0085

In the High Court Of Kerala

Case No : W.A 27 of 1993 Against OP 5735/92

Narayanan Raghavan and Others APPELLANT

Vs

Nuruddin and others RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 52
Kerala High Court Rules, 1971 — Rule 159

Citation : (1993) 1 KLJ 560

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : B. Krishnamani, for the Appellant; Jose K. Kochupappu, Govt. Pleader, for the Respondent

Judgement

Jagannadha Rao, C.J.—A question of Court Fee has arisen in the matter. There are three appellants before us who were respondents 4 to 6 in the writ petition. In the writ petition, certain directions were given by the learned single Judge. This appeal is preferred by the three appellants. First appellant, who was the fourth respondent in the writ petition, claims that he had donated certain property to the SNDP Yogam, which is a charitable trust. Second appellant, who was the fifth respondent in the writ petition, is impleaded in his capacity as the President of the SNDP Yogam, Branch No. 2034, Kulappuram. Third respondent, who was the sixth respondent in the writ petition, is impleaded as the Secretary of the said Yogam. In the writ petition filed by two persons, their case was that the above said three appellants were unlawfully trespassing into the property for the purpose of the above said Trust, namely, for burial of dead-bodies, in the subject-matter of the writ petition. Writ petitioners claimed that they had title to the property and that the appellants did not have any title to the property and, therefore, the writ petitioners should get police protection as against the appellants. The learned single Judge gave directions granting police protection. It is against the said order that the present appeal has been preferred.

2. In the grounds of appeal as well as in the counter affidavit filed before the learned single Judge, it is stated that the first appellant (fourth respondent in the writ petition), who donated the property to the SNDP Yogam is also a member of the Yogam.

3. It is now contended by learned counsel for the appellants that the first appellant it trying to protect the interests of the Yogam at a member while the second and third respondents are protecting the interests of the Yogam as President and Secretary of the concerned Branch. According to him, they are not claiming any separate or joint interest in property, but are projecting the interest of a single body, namely, the SNDP Yogam.

4. The Court Fee payable in Writ Appeals is governed by Rule 159 of the Rules made under the Kerala High Court Act, Rules & Practice. Rule 159(2), which is the relevant Rule, reads as follows:

159(2):- More persons than one may join in one writ appeal as appellants in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons present separate writ appeals any common question of law of fact would arise provided that each person joining in such writ appeal shall pay the court-fee payable under Article 3(III)A(2)(c) of Schedule II of the Kerala Court Fees and Suits Valuation Act as if he had brought a separate Appeal.

A reading of the Rule, no doubt, shows that when more persons than one join in one appeal at appellants in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where, if such persons present separate writ appeals any common question of law of fact would arise provided then each person joining in such writ appeal shall pay the court-fee payables under Art. 3(III)A(2)(c) of Schedule II of the Kerala Court Fees and Suits Valuation Act as if he had brought a separate appeal.

5. The above said Article of the Kerala Court Fees and Suits Valuation Act, insofar as it is relevant, reads as follows:

3. Memorandum of appeal from an order

(i)...............

(ii)...............

(iii) to the High Court -

(A)...............

(1)...................................

(a).........................

(b)..............................

(2) Where the appeal is u/s 5 of the Kerala High Court Act, 1958-

(a) From an order pasted in exercise of appellate Jurisdiction Ten rupees

(b) From an order passed in exercise of original jurisdiction, which would be appealable under the Code of Civil Procedure, 1908, had it been passed by a Subordinate Court Ten rupees

(c) In any other case One hundred rupees

Therefore, the court-fee payable on a memorandum of writ appeal is Rs. 100/-. But the question is whether the three appellants before us should pay Rs. 100/- each in view of Rule 159 (2) extracted above. In our opinion, the said Rule is not attracted to the facts of the case inasmuch as the three appellants are not claiming any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions jointly or severally. If they were doing so, then they would have become liable to pay court-fee of Rs. 100/- each, in accordance with the latter part of Rule 159 (2). In our opinion, all the appellants are representatives of a single body, namely, the SNDP Yogam, which is a charitable trust and they are all claiming a single right on behalf of the Yogam. In other words, it is the Yogam which is claiming through them. Therefore, the Yogam as a single body must be treated in law to be the appellant before us. In fact, the first appellant who donated the property to the Yogam cannot be permitted to claim any individual rights in the property for himself, but can claim only as a representative of the Yogam.

6. For the aforesaid reasons, we hold that only Rs. 100/- is payable as court-fee on the memorandum of appeal and that each of the appellants need not pay Rs. 100/.

7. Learned Government Pleader has, however, relied upon a decision of this Court in Vasudevan Embrandiri v. Cherpu Service Co operative Bank Ltd (1977 KLT 524) That was a case where the appellant was questioning a decision of the Co operative Tribunal Trivandrum The court-fee of Rs. 25/ was paid on the writ petition inasmuch as, at the relevant time, that was the court-fee payable on the writ petition After the writ petition was dismissed, seven writ petitioners sought to file a writ appeal. This Court upheld the objection raised by the Registry that each of them must pay Rs. 100/- on the memorandum of writ appeal and that the sum of Rs 100/- paid on the memorandum was not sufficient and the balance of Rs. 600/- was, therefore, demanded. In that context, the learned Judges referred to Rule 147-A, which is similar to Rule 159(2). On the facts of that case, it was held, after referring to Kunhi- Kader and Others v. State of Kerala and Others (1961 KLT 792) and to an order passed in an Un-numbered writ appeal, that where a plurality of petitioners or appellants having separate and individual interest in the subject-matter of the petition or the appeal join in one action, although only one petition or appeal may be filed, court-fee has got to be paid by

each one of the petitioners / appellants, having individual interest separately on the petition or the appeal.

8. In our view, the said decision is not applicable to the facts of the present case before us. Here the position is that the three appellants are not claiming any right themselves either severally or jointly, but are claiming to protect the interests of the SNDP Yogam.

9. For the aforesaid reasons, the court-fee of Rs. 100/- paid on the memorandum of appeal is sufficient.

10. Learned counsel for the appellants then raised a submission u/s 52 of the Kerala Court Fees and Suite Valuation Act that at the stage of admission only one-third of the court-fee payable on the memorandum of appeal need be paid. Section 52, in so far as it is, relevant, reads as follows:

"52. Appeals:- The fee payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject matter of the appeal:

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the court of first instance or by the court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree:

Provided further that one third of the fee payable in an appeal shall be paid at the stage of admission of first appeal or second appeal as the case may be and the balance shall be paid within such period, not later than fifteen days from the date of such admission as may be specified by the court; in case the appeal is admitted:

Provided also that the court may, for sufficient reasons to be recorded in writing, extend the period upto thirty days.

Explanation 1:- Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same us the fee that would be payable on the relief in the court of first instance.

A reading of the first proviso and the Explanation would show that Section 52 is attracted to cases where court-fee is payable in the court of first instance. If court-fee is not so payable in the court of first instance, Section 52 cannot be applied. Admittedly, no court fee is payable at the stage of a writ petition. In that view of the matter, Section 52 will not apply.

For the aforesaid reasons, the Office objection is over-ruled and the writ appeal will be registered inasmuch as the appellants have already paid Rs. 100/- on the memorandum of appeal.

